



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2009

Honorable Kerri L. Briggs  
Acting State Superintendent  
Office of the State Superintendent  
Government of the District of Columbia  
441 4<sup>th</sup> Street, NW  
Suite 350 North  
Washington, DC 20001

Dear Dr. Briggs:

This is to inform you that we have conditionally approved the District of Columbia's application for Federal Fiscal Year (FFY) 2009 funds under Part B of the Individuals with Disabilities Education Act (IDEA or Part B). Our conditional approval is based on our review of the application submitted by the District of Columbia Office of the State Superintendent (DC OSSE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 11, 2009 and revised on June 17, 2009 and June 26, 2009, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided specific assurances that it will:

1. Operate consistent with Part B and applicable regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA and applicable regulations as soon as possible, and not later than June 30, 2010. Section II of the State's application identifies the IDEA requirements for which the State needs to amend policies and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B and applicable regulations. Within Section II, the State has included for each assurance it cannot meet at this time the date by which it expects to complete necessary changes to any policies and procedures that are not yet in compliance with the requirements of Part B and applicable regulations.

As set forth in Enclosure D, in April 2006, under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department designated the District of Columbia Public Schools (DCPS)<sup>1</sup> a "high-risk" grantee. Special Conditions were placed on all Department grants awarded to DCPS because of problems in DCPS' fiscal and program accountability, management systems, and related areas. The DCPS FFY 2006, FFY 2007, and FFY 2008 IDEA Part B grant awards were released subject to the Department-wide FFY 2006, FFY 2007 and FFY 2008 Special Conditions. Because of the problems noted in the Department's correspondence, dated June 15, 2009 (Enclosure D), the DC OSSE's status as a

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<sup>1</sup> The District of Columbia Public Education Reform Act of 2007 signed into law by the Mayor on April 23, 2007, transferred authority to the Mayor's Office for the purpose of administering Federal grants, the functions of the State Educational Agency (SEA), the Local Educational Agency (LEA), and the state agencies responsible for Adult Education and Literacy and the IDEA Part C early Intervention Program. The transfer became effective October 1, 2007.

“high-risk” grantee under 34 CFR §80.12 continues, and therefore, Special Conditions are imposed on all grants awarded to DC OSSE by the Department.

In addition to the Department-wide conditions, the State’s FFY 2009 IDEA Part B grant awards are being released subject to FFY 2009 Special Conditions, as set forth in Enclosure E, that are being imposed pursuant to the Department’s authority in IDEA section 616(g) and 34 CFR §80.12. Specifically, OSEP determined that the DC OSSE has continued to demonstrate noncompliance with the requirements to: provide timely initial evaluations and reevaluations (IDEA section 612(a)(7) and 614(a) through (c) and 34 CFR §§300.301(c)(1) and 300.303); implement due process hearing decisions in a timely manner (IDEA section 615(f) and (i)); ensure placement in the least restrictive environment (LRE) (IDEA section 612(a)(5)(A) and 34 CFR §§300.114 through 300.120); and identify and correct noncompliance with the requirements of Part B of the IDEA (IDEA section 612(a)(11) and 616(a), 20 U.S.C. 1232d(b)(3), and 34 CFR §§300.149 and 300.600).

Your State’s failure to provide timely initial evaluations and reevaluations, to implement due process hearing decisions in a timely manner, to ensure placement in the LRE, and to identify and correct noncompliance resulted in the Department imposing the FFY 2008 Special Conditions contained in Enclosure E of the July 9, 2008 grant award letter. Because the DC OSSE did not meet those Special Conditions, the Department is imposing Special Conditions on the State’s FFY 2009 grant awards under Part B. OSEP also included two additional requirements in the FFY 2009 Special Conditions: collect and report data for select SPP/APR indicators (IDEA section 616(b)(2)(B) and 34 CFR §300.601(b)(1)); and ensure individualized education programs include the required secondary transition content (IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §300.320(b)). The reasons for doing so and the specific conditions are detailed in the enclosure. The State must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by the District of Columbia of these grant awards constitutes an agreement by the State to comply with the Special Conditions. These Special Conditions imposed under IDEA section 616(g) and 34 CFR §80.12 on the DC OSSE’s FFY 2009 Part B grant are in addition to the withholding action the Department intends to take under IDEA section 616(e)(2)(B)(iii).

Please note that as part of your application for FFY 2009, your State has made an assurance, in 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the State, after OSEP approval, to information that is a part of a State’s application, must meet the public participation requirements in 34 CFR §300.165.

Enclosed are the State’s regular grant awards for funds currently available under the Omnibus Appropriations Act, 2009 for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2009-2010 and are available for obligation by States from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

On June 1, 2009 the Department informed the DC OSSE that based on its determination that the DC OSSE “needs intervention” in meeting the requirements of Part B of the IDEA for the third

consecutive year, the Department intended, pursuant to IDEA section 616(e)(2)(B)(iii) and 34 CFR §300.604(b)(2)(iii), to withhold 20 percent of the State's FFY 2009 funds reserved for State-level activities under IDEA section 611(e) until the DC OSSE sufficiently addressed the areas in which it "needs intervention." The June 1, 2009 letter provided the DC OSSE the opportunity to contest the Department's determination of "needs intervention," to request a hearing "to appeal the Department's decision to withhold these funds," and to show cause in writing why funds should not be suspended pending the outcome of the hearing. In its June 16, 2009 response, the DC OSSE requested a hearing to appeal the Department's decision to withhold State-level funds and included information intended to show cause why the Department should not suspend payment of those funds pending the outcome of the hearing, but did not contest the Department's determination of "needs intervention." The Department granted the DC OSSE's request for a hearing pursuant to the procedures in 34 CFR §§300.180 through 300.183 "to appeal the Department's decision to withhold these funds" and notified you regarding the designation of a Hearing Official. In its June 30, 2009 letter, the Department notified the DC OSSE that it has determined that the DC OSSE failed to show cause why 20 percent of DC's FFY 2009 funds reserved for State-level activities should not be suspended pending the outcome of the hearing and the reasons for that determination.

The Department therefore has suspended payment of \$479,959 of the DC OSSE's section 611 funds, pending the outcome of the hearing. This represents twenty percent of \$2,399,795, the total amount of DC's FFY 2009 funds that may be reserved for State-level activities under IDEA section 611(e). The amount in your award for Section 619, \$240,249, represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2009. The amount shown in your July 1, 2009 award for Section 611 is \$3,699,755. This represents the amount available for DC's award on July 1, 2009, \$4,179,714 minus \$479,959. The amount of \$12,799,735 will be available on October 1, 2009.

Under the Section 611 formula, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities.<sup>2</sup> We allocated the regular FFY 2009 appropriation for the Preschool Grants program, which represents a reduction of \$280 from the appropriation level for FFY 2008, under the formula in Section 619(c)(3). Under this provision, when the amount available for allocations is less than the amount allocated to the States for the preceding fiscal year, each State is first allocated the amount that the State received from FFY 1997 funds. The remaining funds are allocated based

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<sup>2</sup> The amount that a State's allocation may increase from one year to the next is capped at the amount the State received in the prior year multiplied by the sum of 1.5 percent and the percentage increase in the total amount appropriated for Part B of IDEA from the prior year. Additionally, the maximum amount that a State may receive in any fiscal year is calculated by multiplying the number of children with disabilities ages 3 through 21 served during the 2004-2005 academic year in that State by 40 percent of the annual per pupil expenditure (APPE), adjusted by the rate of annual change in the sum of 85 percent of the children aged 3 through 21 for whom that State ensures FAPE and 15 percent of the children living in poverty. Because there are multiple caps, in any year the "effective cap" on a State's allocation is the lowest cap for that State.

on the relative amount of the increase in funding that the State received between FFYs 1997 and 2008, as compared to the total of such increases for all States.<sup>3</sup>

In addition to these regular FFY 2009 Part B funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part B funding. The ARRA IDEA Part B grants are a supplemental appropriation to the regular IDEA Part B appropriation. The first 50 percent of the ARRA IDEA Part B funds were awarded to States on April 1, 2009 and the second 50 percent will be available to States by September 30, 2009. Please note that each State will be required to submit additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA before it will be considered eligible to receive the second 50 percent of the ARRA funds. Together, a State's regular FFY 2009 IDEA funds and a State's ARRA IDEA Part B funds constitute a State's total FFY 2009 Part B allocation. Given the increased IDEA Part B FFY 2009 allocation to each State, States may wish to review carefully the guidance on the ARRA IDEA Part B grant awards, available at <http://www.ed.gov/fund/data/award/idea/arra/index.html>.

Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations.

Enclosure C provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure C shows State-by-State funding levels for distribution of Section 619 funds.

Section 611(e)(1)(C) of the IDEA provides that "[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current." We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services, the State may not expend funds available to the State under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Under section 608(a)(2) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations. A State may use the same list of State-imposed rules, regulations and policies that it was required to submit to the Department in Section IV of its Part B application for this purpose.

The enclosed grant awards for FFY 2009 are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part B.

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<sup>3</sup> Since total FFY 2009 appropriations for Section 619 (including both the regular and ARRA appropriations) represent an increase from the appropriations level for FFY 2008, each State received a total FFY 2009 allocation based on the formula in Section 619(c)(2), which bases distributions on the amount that each State received from FFY 1997 funds, the State's relative population of children aged three through five and the State's relative population of children aged three through five who are living in poverty.

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We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in cursive script, reading "Patricia J. Guard".

Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosures

Enclosure A  
Enclosure B  
Enclosure C  
Enclosure D  
Enclosure E

cc: Catherine E. Freeman  
Tamera Lewis